

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3992 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA Sd/-

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
Nos. 1 to 5 No.

AALAMKHAN MOHMADKHAN PATHAN

Versus

COMMISSIONER OF POLICE

Appearance:

MS SUBHADRA G PATEL for Petitioner

MR.NEEGAM SHUKLA APP for Respondents.

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 08/10/96

ORAL JUDGEMENT

This Special Civil Application is directed against the order dated 16.4.1996 passed by the Police Commissioner, Ahmedabad City whereby the petitioner has been detained under the provisions of the Gujarat Prevention of Antisocial Activities Act, 1985. The detention order was executed against the petitioner on 16.4.1996 and since then the petitioner is under

detention lodged at Porbandar Jail, Porbandar.

The present Special Civil Application was filed on 11.6.1996 and on 12.6.1996 Rule returnable for 28.6.1996 was issued. So far no reply has been filed on behalf of the respondents nor any affidavit of the Detaining Authority has been filed.

The grounds of detention show that four criminal cases for the year 1995 are pending against the petitioner under NDPS Act with regard to Brown Sugar, Charas and heroin. These four cases pertain to the Police Stations Dariapur, Kalupur, Shaherkotada and Dholka. While narrating the allegations against the petitioner with regard to Case No.161/95 of Taluka Police Station, it has been mentioned by the Detaining Authority that on 27.7.1995 when Kalupur Police came to arrest the petitioner the crowd was collected and the members of the crowd were armed with iron bars, pipes, sticks and glass bottles containing soda. The petitioner called upon the members of the crowd to come to the rescue against the police and police was attacked with stones and soda bottles and the police had to resort to the firing and the members of the crowd got injuries and the petitioner himself while he was trying to escape fell down and sustained injuries and for this incident criminal case no. 66/95 was registered against the petitioner and his associates at Dariapur Police Station under sections 143, 147, 148, 149,, 186, 224, 307, 332, 225, 427 and under section 135(1) of the Bombay Police Act and that all these cases are pending in the Court. The Detaining Authority has referred to the allegations of criminal case and has considered that the petitioner is a headstrong person in Dariapur Area. He is engaged in violent activities with the help of his associates and was dangerous person and was engaged in selling intoxicants and that he was drug offender which has affected law and order by his antisocial activities. The Detaining Authority has then referred to two incidents dated 25.2.1996 and 14.3.1996 about which the witnesses have stated against the petitioner that the petitioner taking the witness to be an informant had publicly beaten him with the help of his associates. The witness cried for help on account of which the crowd was collected and the petitioner ran toward the crowd, he then opened knife resulting into the people helter-skelter and an atmosphere of terror was created. The other witness has stated with regard to the incident dated 14.3.1996 that he was also treated in the same way. Two other witnesses have also supported the allegations as above. The Detaining Authority has mentioned that the petitioner has

created a fear psychosis amongst the innocent people and has been threatening and beating them publicly by keeping weapons with him. The witnesses had requested to keep their identity secret because they are afraid and frightened of the petitioner and for this reason the Detaining Authority invoked section 9(2) of the PASA Act to keep the identity of these witnesses to be secret. The Detaining Authority has considered that immediate detention of the petitioner was necessary and the proceedings under the Bombay Police Act for externment is likely to take a long time and could not be an adequate remedy in reference of this case. In view of the aforesaid activities of the petitioner and looking to the evil consequences of the drugs like Brown Sugar, Charas and Heroin the Detaining Authority was satisfied that it was necessary to detain the petitioner under PASA Act and accordingly the order of detention was passed.

The detention order shows that the petitioner was bailed out in the cases which were pending against him before the Court and Mr. Nigam Shukla, learned APP under instructions from the officers of the State Government has stated that the petitioner has also been discharged in two out of four cases.

I have considered the submissions made on behalf of both the sides. I need not deal with all the grounds on which the detention order is challenged because I find that the allegations as have been levelled do not constitute a case of breach of public order. I have already considered the similar allegations in Special Civil Application No. 3879 of 1996 decided on 4.10.1996 and after considering the ratio of the judicial pronouncement by the Supreme Court and this Court it has been found that the allegations such as levelled in the present case do not constitute the case of breach of public order and at the most it is a case of breach of law and order. The reasoning on which the Special Civil Application No. 3879 of 1996 has been allowed applies with full force on the facts of the present case. It is held that the detention order as passed in this case was not at all warranted.

Accordingly this Special Civil Application is allowed. The impugned detention order dated 16.4.1996 passed against the petitioner-detenu by the Police Commissioner, Ahmedabad City is hereby quashed and set aside and it is directed that the petitioner - detenu is set at liberty forthwith if not required in any other case. Rule made absolute.
